HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

Second Appeal No.205 of 2001

(Old no. 1409 of 1986)

Smt. Shashi W/o Late Sambhoo Dayal,

And two others. ….Appellants.

Vs.

Ram Avtar S/o Man Singh

And four others. ….Respondents

Sri S.P. Agarwal, learned counsel for the appellants,
None for the respondent.

Hon'ble M.M. Ghildiyal, J.

This second appeal is preferred against the judgment and order dated 12.11.1982 passed by the Munsif, Haldwani, Nainital in Original Suit No. 84 of 1982 whereby the trial Court decreed of suit filed by the plaintiff (respondents in this appeal) and judgment and order dated 28.05.1986 passed by Addl. Civil Judge, Nainital in Civil Appeal no. 98 of 1982 whereby the appeal preferred by the petitioner/appellant was dismissed.

The facts, in brief, are that plaintiff-Man Singh has filed a suit against the Ugrasen and Shambhu Dayal-appellant stating therein that the plaintiff is the owner of the land and house, which constructed over the land situated in village Majhola, Tehsil Khatima, District Nainital. In the house, there are three rooms and adjoining land. In which the defendant no. 1 Ugrasen is tenant @ Rs. 50/- per month. The plaintiff has alleged that defendant no. 1 has sublet two rooms of the said house to one Sri Shambhu Dayal who has made substantial alteration in the house by replacing the doors and has constructed new house in place of the old house. The defendant has obstructed the way by putting a door towards the vacant land, which is being used by the plaintiff for various purposes for which the defendant has no legal right. The defendants have filed their joint written statement before the trial Court stating therein that neither the plaintiff is the landlord of the premises

in suit nor are they the tenants in the premises in suit. It has also stated that Sri Ugrasen has purchased the land in disputed on 23.12.1966 on a considerate sum of Rs. 625/- from Sri Pritam Singh, the elder brother of the plaintiff and the land in dispute came to the possession of Ugrasen by a written consent. Sri Ugrasan has sold the land in dispute to defendant no.2 in a sum of Rs. 8,000/-, thereafter; the defendant no.2 is in the possession of the land in dispute. The suit is barred by the principle of estoppels.

On the pleadings of the parties, the trial court has framed the issues and recorded the evidence of both the parties. And after hearing learned counsel for both the parties the trial Court has decreed the suit on 12.11.1982 holding that the plaintiff is the co-owner of the land and premises in dispute alongwith his brothers and the plaintiff has failed to prove that the defendants are the tenant of the plaintiff in the premises in dispute as claimed by the plaintiff. Aggrieved by the judgment and decree, the appellant has preferred Civil Appeal no. 98 of 1982 before the Civil Judge, Nainital which was decided on 28.05.1986 by the Add. Civil Judge, Nainital who has also dismissed the appeal.

This second has been admitted on the following question of law:-

1. Whether a decree for injunction could be granted in the plaintiff's favour without relief of possession?
2. Whether it was incumbent to decide the question of valuation, court fee and jurisdiction before deciding the suit on merits and whether the lower appellate court decided the appeal arbitrarily?

During the pendency of this appeal the appellant Shambhoo Dayal as well as the respondent Man Singh were

died, therefore, vide court's order dated 3.9.2003 the legal heirs of both the appellant and respondent were substituted.

Despite sufficient service, the respondents did not turn up before this Court. I have heard Sri S.P. Agarwal, learned counsel for the appellant and perused the material on record.

A bare persual of the judgment and orders passed by the trial Court as well as by the First Appellate Court show that the plaintiff is the co-owner of the land and premises in dispute alongwith his brothers and the defendants/appellant has failed to prove that the land which he purchased from Ugrasen was divided amongst Sher Singh, Pritam Singh and Man Singh-the plaintiff, because he could not produce any authorisation-deed entitling the brother of the petitioner, namely, Sri Pritam Singh to sell the property unilaterally. The courts below have also held that the plaintiff has failed to prove that the appellant is his tenant, because he could not led any documentary evidence in this regard. The documents, which the plaintiff has filed before the court below as paper no. 23c and 24c were unregistered, therefore, the trial court did not rely upon them. Consequently, the courts below have held that the defendant is not the tenant on the property in dispute. Both the courts below have held that on account of alteration on the property in dispute here was sufficient cause of action arose for the plaintiff. After perusal of the pleadings the trial Court has framed issues, at that time the defendant had sufficient occasion to press for framing the additional issues, but he did not avail this opportunity. Therefore, the appellant cannot raise plea that the trial court as well as the appellate court have not considered on the relevant issues. No issue was framed in regard to valuation, court fee and on the jurisdiction. So far as the issue relates to whether a decree for injunction could be granted in the plaintiff's favour without relief of possession is

concerned, the plaintiff has prayed for the relief that the defendant be restrained from destroying the material of the house and further be restrained from construction on the land in dispute, the trial court has granted relief to this question only.

Both the courts below have given concurrent findings. I find that the trial court as well as the first appellant court have considered every aspect of the required questions. The substantial questions of law are not liable to be reconsidered. I find no illegality or perversity in the findings given by the court below. Consequently, the appeal is dismissed. No order as to costs.

Let the information be send to the court concerned.

(M.M. Ghildiyal, J.)

July 21, 2004:
NCM: